

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

Case No. 4:22-cv-290

PREPARED FOOD PHOTOS, INC. f/k/a
ADLIFE MARKETING &
COMMUNICATIONS CO., INC.,

Plaintiff,

v.

RR USA INVESTMENTS LLC,
d/b/a DON JAVIER MEAT MARKET &
TAQUERÍA,

Defendant.

COMPLAINT

Plaintiff Prepared Food Photos, Inc. f/k/a Adlife Marketing & Communications Co., Inc. (“Plaintiff”) sues defendant RR USA Investments LLC, d/b/a Don Javier Meat Market & Taquería (“Defendant”), and alleges as follows:

THE PARTIES

1. Plaintiff is a corporation organized and existing under the laws of the State of Florida with its principal place of business located in Palm Beach County, Florida.

2. Defendant is a limited liability company organized and existing under the laws of the State of Texas with its principal place of business located at 13526 Tidwell Road, Ste 500, Houston, Texas 77044-1552. Defendant’s Agent for Service of Process is Javier H. Valdivieso-Perry, 3611 Barton Lane, Sugar Land, Texas 77479.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§

1331 and 1338(a).

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over Defendant because it is a citizen and resident of Texas and because it maintained sufficient minimum contacts with Texas such that the exercise of personal jurisdiction over it would not offend traditional notions of fair play and substantial justice.

6. Venue properly lies in this district pursuant to 28 U.S.C. § 1400(a) because Defendant or its agents reside or may be found in this district. “It is well established that, for purposes of Section 1400(a), a defendant ‘may be found’ in any district in which it is subject to personal jurisdiction.” Isbell v. DM Records, Inc., No. 3:02-CV-1408-G, 2004 U.S. Dist. LEXIS 10394, at *41 (N.D. Tex. June 4, 2004) (“Because the court has determined that it has personal jurisdiction over DM, DM ‘may be found’ in this district and venue is therefore proper.”).

FACTS

I. Plaintiff’s Business

7. Plaintiff is in the business of licensing high-end, professional photographs for the food industry.

8. Through its commercial website (www.preparedfoodphotos.com), Plaintiff offers a monthly subscription service which provides access to/license of tens of thousands of professional images.

9. As of the date of this pleading, Plaintiff charges its clients (generally, grocery stores, restaurant chains, food service companies, etc.) a monthly fee of \$999.00 for access to its library of professional photographs.

10. Plaintiff does not license individual photographs or otherwise make individual photographs available for purchase. Plaintiff's business model relies on its recurring monthly subscription service such that Plaintiff can continue to maintain its impressive portfolio.

11. Plaintiff owns each of the photographs available for license on its website and serves as the licensing agent with respect to licensing such photographs for limited use by Plaintiff's customers. To that end, Plaintiff's standard terms include a limited, non-transferable license for use of any photograph by the customer only. Plaintiff's license terms make clear that all copyright ownership remains with Plaintiff and that its customers are not permitted to transfer, assign, or sub-license any of Plaintiff's photographs to another person/entity.

II. The Work at Issue in this Lawsuit

12. In 1997, a professional photographer created a photograph titled "RawChickenTender005_ADL" (the "Work"). A copy of the Work is exhibited below.



13. The Work was registered by Plaintiff (pursuant to a work-for-hire agreement with the author that transferred all rights and title in the photograph to Plaintiff) with the Register of

Copyrights on January 23, 2017 and was assigned Registration No. VA 2-046-891. A true and correct copy of the Certification of Registration pertaining to the Work is attached hereto as **Exhibit “A.”**

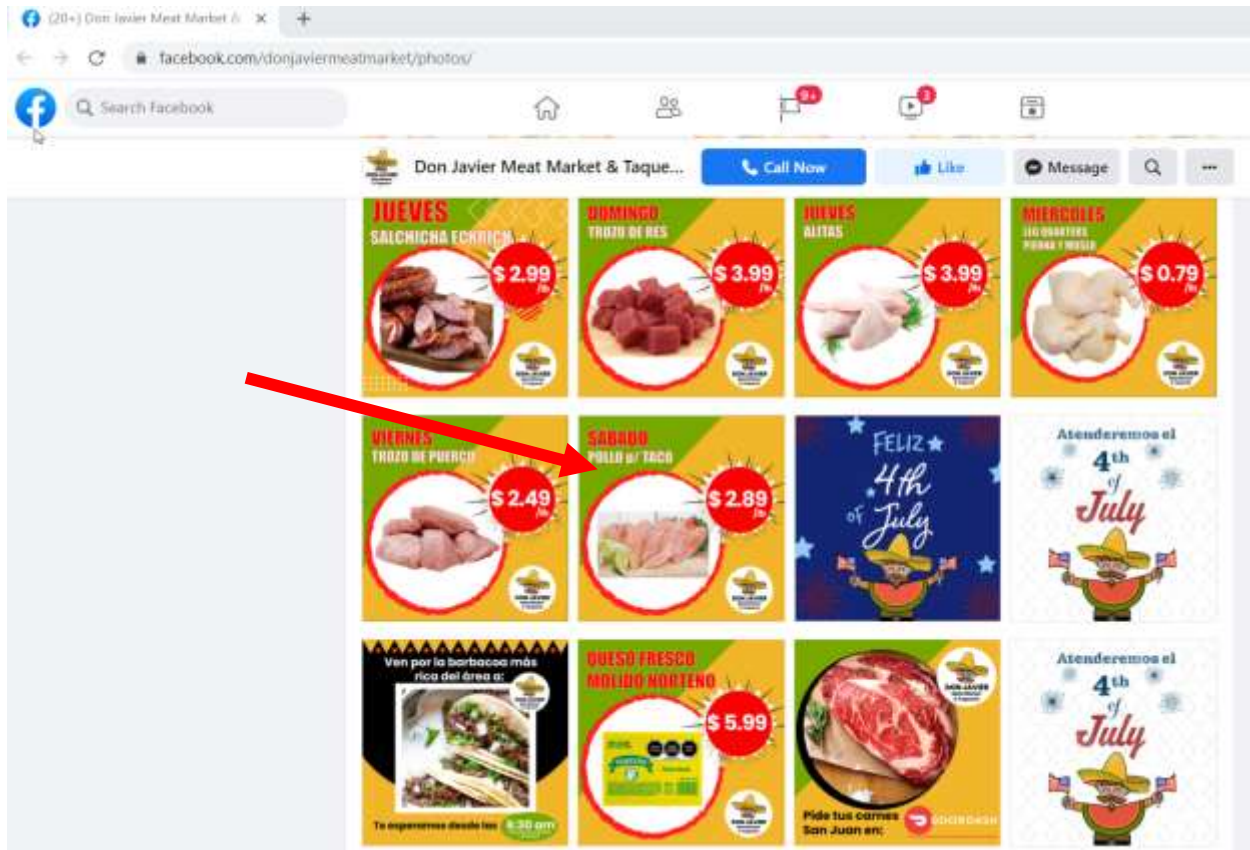
14. Plaintiff is the owner of the Work and has remained the owner at all times material hereto.

III. Defendant’s Unlawful Activities

15. Defendant owns and operates meat market, grocery store, and taqueria in Houston, Texas.

16. Defendant advertises/markets its business primarily through its aforementioned website (<https://donjaviermeatmarket.com/>), social media (e.g. https://www.facebook.com/donjaviermeatmarket/?ref=page_internal), and other forms of advertising.

17. On a date after Plaintiff’s above-referenced copyright registration of the Work, Defendant published the Work on its Facebook page (<https://www.facebook.com/donjaviermeatmarket/photos/>) in connection with the sale of “Chicken Tenders”:



18. A true and correct copy of screenshots of Defendant's website, displaying the copyrighted Work, is attached hereto as **Exhibit "B."**

19. The foregoing display of the Work on Defendant's website was accessible and was in fact accessed from persons in the State of Florida.

20. Defendant is not and has never been licensed to use or display the Work. Defendant never contacted Plaintiff to seek permission to use the Work in connection with its Facebook page/advertising or for any other purpose – even though the Work that was copied is clearly professional stock photography that would put Defendant on notice that the Work was not intended for public use.

21. Defendant utilized the Work for commercial use – namely, in connection with the marketing of Defendant's business and sale of chicken tenders.

22. Upon information and belief, Defendant located a copy of the Work on the internet and, rather than contact Plaintiff to secure a license, simply copied the Work for its own commercial use.

23. Through its ongoing diligent efforts to identify unauthorized use of its photographs, Plaintiff first discovered Defendant's unauthorized use/display of the Work in approximately October of 2020. Following Plaintiff's discovery, Plaintiff notified Defendant in writing of such unauthorized use. To date, Plaintiff has been unable to negotiate a reasonable license for the past infringement of her Work.

24. All conditions precedent to this action have been performed or have been waived.

COUNT I – COPYRIGHT INFRINGEMENT

25. Plaintiff re-alleges and incorporates paragraphs 1 through 24 as set forth above.

26. The Work is an original work of authorship, embodying copyrightable subject matter, that is subject to the full protection of the United States copyright laws (17 U.S.C. § 101 *et seq.*).

27. Plaintiff owns a valid copyright in the Work, having registered the Work with the Register of Copyrights and owning sufficient rights, title, and interest to such copyright to afford Plaintiff standing to bring this lawsuit and assert the claim(s) herein.

28. As a result of Plaintiff's reproduction, distribution, and public display of the Work, Defendant had access to the Work prior to its own reproduction, distribution, and public display of the Work on its commercial website.

29. Defendant reproduced, distributed, and publicly displayed the Work without authorization from Plaintiff.

30. By its actions, Defendant infringed and violated Plaintiff's exclusive rights in

violation of the Copyright Act, 17 U.S.C. § 501, by reproducing, distributing, and publicly displaying the Work for its own commercial purposes.

31. Defendant's infringement was willful as it acted with actual knowledge or reckless disregard for whether its conduct infringed upon Plaintiff's copyright. Notably, Defendant protects its copyrighted material on its website by publishing a copyright management notice, "Copyright © 2021 Don Javier Meat Market - All Rights Reserved" which asks others to respect its intellectual property rights. Therefore, Defendant clearly understands that high-end food photography is not generally available for free or that such can simply be copied from the internet.

32. Plaintiff has been damaged as a direct and proximate result of Defendant's infringement.

33. Plaintiff is entitled to recover its actual damages resulting from Defendant's unauthorized use of the Work and, at Plaintiff's election (pursuant to 17 U.S.C. § 504(b), Plaintiff is entitled to recover damages based on a disgorgement of Defendant's profits from infringement of the Work, which amounts shall be proven at trial.

34. Alternatively, and at Plaintiff's election, Plaintiff is entitled to statutory damages pursuant to 17 U.S.C. § 504(c), in such amount as deemed proper by the Court.

35. Pursuant to 17 U.S.C. § 505, Plaintiff is further entitled to recover its costs and attorneys' fees as a result of Defendant's conduct.

36. Defendant's conduct has caused and any continued infringing conduct will continue to cause irreparable injury to Plaintiff unless enjoined by the Court. Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiff is entitled to a permanent injunction prohibiting infringement of Plaintiff's exclusive rights under copyright law.

WHEREFORE, Plaintiff demands judgment against Defendant as follows:

- a. A declaration that Defendant has infringed Plaintiff's copyrights in the Work;
- b. A declaration that such infringement is willful;
- c. An award of actual damages and disgorgement of profits as the Court deems proper or, at Plaintiff's election, an award of statutory damages for willful infringement up to \$150,000.00 for each infringement of the Work;
- d. Awarding Plaintiff its costs and reasonable attorneys' fees pursuant to 17 U.S.C. § 505;
- e. Awarding Plaintiff interest, including prejudgment interest, on the foregoing amounts;
- f. Permanently enjoining Defendant, its employees, agents, officers, directors, attorneys, successors, affiliates, subsidiaries and assigns, and all those in active concert and participation with Defendant, from directly or indirectly infringing Plaintiff's copyrights or continuing to display, transfer, advertise, reproduce, or otherwise market any works derived or copied from the Work or to participate or assist in any such activity; and
- g. For such other relief as the Court deems just and proper.

Demand For Jury Trial

Plaintiff demands a trial by jury on all issues so triable.

Dated: January 28, 2022.

COPYCAT LEGAL PLLC
3111 N. University Drive
Suite 301
Coral Springs, FL 33065
Telephone: (877) 437-6228
dan@copycatlegal.com

By: /s/ Daniel DeSouza
Daniel DeSouza, Esq.

EXHIBIT “A”

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Acting United States Register of Copyrights and Director

Registration Number

VA 2-046-891

Effective Date of Registration:

January 23, 2017

Title

Title of Work: ADLIFE-COLLECTION-011317

Content Title: Group registration of photos published 01-11-1998 through 12-05-1998; about 230 photos total.

ChickenBreastBacon001_ADL, 09-10-1998;
ChickenBreastBBQ001eps_ADL, 07-08-1998;
ChickenBreastBBQ002_ADL, 07-08-1998;
ChickenBreastBBQ003_ADL, 07-08-1998;

ChickenBreastBBQ004_ADL, 07-08-1998;
ChickenBreastBBQ005_ADL, 07-08-1998;
ChickenBreastBBQ006_ADL, 07-08-1998;
ChickenBreastBBQ007_ADL, 07-08-1998;
ChickenBreastBnIn001_ADL, 11-05-1998;

ChickenBreastBnIn002_ADL, 08-18-1998;
ChickenBreastBnIn003_ADL, 08-18-1998;
ChickenBreastBnIn004_ADL, 08-18-1998;
ChickenBreastBnInWhole001_ADL, 08-18-1998;
ChickenBreastBnInWhole002_ADL, 08-18-1998;

ChickenBreastBnInWhole003_ADL, 08-18-1998;
ChickenBreastBnInWhole004_ADL, 04-23-1998;
ChickenBreastBnInWhole005_ADL, 05-22-1998;
ChickenBreastBnls001_ADL, 08-18-1998;
ChickenBreastBnls002_ADL, 08-18-1998;

ChickenBreastBnls003_ADL, 10-24-1998;
ChickenBreastBnls004_ADL, 08-18-1998;
ChickenBreastBnls005_ADL, 09-05-1998;
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ChickenBreastBnls011_ADL, 01-20-1998;
ChickenBreastBnls012_ADL, 08-18-1998;
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ChickenBreastBnlsGrIMrk019_ADL, 11-12-1998;
ChickenBreastBnlsGrIMrk020_ADL, 07-16-1998;
ChickenBreastBnlsGrIMrk022_ADL, 06-05-1998;
ChickenBreastBnlsGrIMrk023_ADL, 03-20-1998;
ChickenBreastBnlsGrIMrk024_ADL, 06-24-1998;

ChickenBreastBnlsGrIMrk025_ADL, 04-10-1998;
ChickenBreastBnlsGrIMrk026_ADL, 04-05-1998;
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ChickenFried026_ADL, 05-13-1998;
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ChickenFriedBox002_ADL, 08-05-1998;
ChickenFriedBox003_ADL, 06-08-1998;

ChickenHalfGlazed001_ADL, 06-05-1998;
RawBeefSirloinSteakTop001_ADL, 08-25-1998;
RawBeefSirloinStrip001_ADL, 08-25-1998;
RawBeefStripRoastNYBnls001_ADL, 11-10-1998;
RawBeefStripSteakBnls001_ADL, 08-25-1998;

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RawBeefStripSteakBnls005_ADL, 02-05-1998;

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RawBeefStripSteakBnls008_ADL, 06-16-1998;
RawBeefStripSteakBnls009_ADL, 06-16-1998;
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RawBeefStripSteakBnls011_ADL, 07-23-1998;

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RawBeefStripSteakNYBnls001_ADL, 09-16-1998;
RawBeefStripSteakNYBnls002_ADL, 11-15-1998;
RawBeefStripSteakNYBnls003_ADL, 11-16-1998;
RawBeefStripSteakNYBnls004_ADL, 05-15-1998;

RawBeefStripSteakNYBnls005_ADL, 09-22-1998;
RawBeefStripSteakNYBnls006_ADL, 09-22-1998;
RawBeefStripSteakNYBnls007_ADL, 09-22-1998;
RawBeefTenderloinButterflied001_ADL, 02-24-1998;
RawBeefTenderloinButterflied002_ADL, 02-24-1998;

RawBeefTenderloinRoast001_ADL, 08-16-1998;
RawBeefTenderloinRoast002_ADL, 11-12-1998;

RawBeefTenderloinSteak001_ADL, 08-16-1998;
RawBeefTipRoastBnls001_ADL, 08-16-1998;
RawBeefTipRoastBnls002_ADL, 08-16-1998;

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RawBeefTips006_ADL, 06-16-1998;
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RawBeefTipSteak002_ADL, 07-24-1998;

RawBeefTopRndSteakBraccioli001_ADL, 04-05-1998;
RawBeefTopRoundRoastBnls001_ADL, 08-16-1998;
RawBeefTopRoundRoastBnls002_ADL, 08-16-1998;
RawBeefTopRoundRoastBnls003_ADL, 09-18-1998;
RawBeefTopRoundRoastBnls004_ADL, 09-22-1998;

RawBeefTopRoundRoastBnls005_ADL, 02-13-1998;
RawBeefTopRoundRoastBnls006_ADL, 04-27-1998;
RawBeefTopRoundRoastBnls007_ADL, 04-27-1998;
RawBeefTopRoundSteak001_ADL, 08-11-1998;
RawBeefTopRoundSteak002_ADL, 08-11-1998;

RawBeefTopRoundSteak003_ADL, 08-11-1998;
RawBeefTripe001_ADL, 05-12-1998;
RawBeefTripe002_ADL, 03-05-1998;
RawBeefTriTipRoastBnls001_ADL, 04-05-1998;

RawTriTipSteak001_ADL, 09-05-1998;
RawTriTipSteak002_ADL, 11-16-1998.

Completion/Publication

Year of Completion: 1998
Date of 1st Publication: January 13, 1998
Nation of 1st Publication: United States

Author

• Author: ADLIFE Marketing & Communications Co. Inc., Employer-for-Hire of Joel Albrizio
Author Created: photograph
Work made for hire: Yes
Domiciled in: United States

Copyright Claimant

Copyright Claimant: Adlife Marketing & Communications Co. Inc.
38 CHURCH ST, PAWTUCKET, RI, 02860-3906, United States

0000VA00020468910504

Rights and Permissions

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Certification

Name: MILTON M. OLIVER, Esq.
Date: January 23, 2017
Applicant's Tracking Number: 873-057-338

EXHIBIT “B”



PreparedFoodPhotos.com
P.O. Box 1000 • Slatersville, RI. 02876
licensing@PreparedFoodPhotos.com
1-866-609-1548

Re: Claim Number: 5098557256836137084
FRE 408 SETTLEMENT COMMUNICATION

Tuesday, October 12, 2021

Company Name

Don Javier Meat Market & Taquería



Company Address

13526 Tidwell Rd
Houston, TX 77044

Company Phone Number

(281) 436-1997

Image Name

RawChickenTender005_ADL

Registration Number

VA0002046915

URL Containing Image

<https://www.facebook.com/donjaviermeatmarket/photos/>

